

## REMARKS

Claims 1, 7-20 are pending in the application. Applicant is amending claims 1 and 7-20 to place them in better form for examination.

### ***Claim Amendments***

Applicant has amended claims 1 amending claims 1 and 7-20 to place them in better form for examination. Applicant has amended the claims to overcome the Examiner's objections. No new matter has been added and no additional fees are believed to be due.

### ***Claim Rejections – 35 U.S.C. §112***

The Examiner has rejected the claims as being indefinite. Applicant has amended this claim to place it in better condition for examination. Applicant kindly asks that the Examiner withdraw this objection.

### ***Claim Rejections – 35 U.S.C. §102***

#### **The Examiner Failed To Show That Applicant's Claims Are Anticipated**

For a claim to be rejected under this statute, it must be anticipated by the prior art. Anticipation occurs when every element of the claimed invention is found in a single prior art reference.<sup>1</sup> In addition to including every element of the claimed invention, the prior art reference must also "be enabling and describe the applicant's claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention."<sup>2</sup> In other words, for the prior art reference to anticipate the claimed invention, all of the

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<sup>1</sup> *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987); see also, *Electro Med. Sys. v. Cooper Life Sciences*, 34 F.3d 1048 (Fed. Cir. 1994) (stating, "[a]nticipation under 35 U.S.C. §102 (b) requires the presence in a single prior art disclosure of each and every element of a claimed invention. . ."); *General Elec. Co. v. Hoechst Celanese Corp.*, 740 F.Supp. 305, 313 (Del. 1990) (stating that "[i]n order to anticipate a later claim, a single prior source must contain all of the essential limitations of the claim").

<sup>2</sup> *In re Paulsen*, 30 F.3d 1475, 1479 (Fed. Cir. 1994).

elements in the claim must be found in a single piece of prior art “in exactly the same situation and united the same way to perform the identical function. . . .”<sup>3</sup>

**A. Applicant’s Claims 1, 9-11, 14-16, 19, and 20 are not anticipated by US Pat. Publ. No. 2005/0005952 issued to Basark (“basark”).**

**1. Claim 1**

Here, *Basark* does not anticipate Applicant’s claim 1. Specifically, *Basark* does not disclose every element in exactly the same situation and united in the same way to perform the identical function of Applicant’s claims. The Examiner asserts that *Basark* includes of the limitations in Applicant’s claims 1, 9-11, 14-16, 19, and 20. Applicant respectfully disagrees with Examiner’s comparison of Applicant’s claim elements to the elements in *Basark*.

The Examiner states that *Basark* teaches a dishwasher with wash tub, sump, circulation pump with variable rpm, and discharge pump. *Office action pages 5-6*. However, there is no circulation pump with variable rpm. As such, the office action has not shown that *Basark* discloses all of the elements of claim 1.

Further, *Basark* only teaches a the use for controlling the amount of liquid added in successive fill sub-cycles. Paragraph [0015]. It does not teach the use of monitoring current for detection of operating problems such as dirt and clogging. Thus, *Basark* does not operate in exactly the same way to perform the identical function.

Applicant kindly asks that this objection be withdrawn.

**Claim Rejections – 35 U.S.C. 103(a)**

**Applicant’s Claims Are Not Rendered Obvious Under 35 U.S.C. §103 Over Any Of The Prior Art Patents**

The Examiner has failed to establish a prima facie case of obviousness. When examining a patent application, the Examiner has the initial burden of factually supporting a

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<sup>3</sup> *Sandisk Corp. v. Lexar Media, Inc.*, 91 F.Supp.2d 1327, 1336 (N.D. Cal. 2000). See also, *In re Arkley*, 455 F.2d 586, 587 (P.App.Cir. 1972) (stating that “rejections under 35 U.S.C. §102 are proper only when the claimed

prima facie conclusion of obviousness.<sup>4</sup> Additionally, when rejecting claims under 35 U.S.C. §103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness.<sup>5</sup> In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). Specifically, the Examiner must (1) determine the scope and content of the prior art; (2) determine the differences between the prior art and the claims at issue; and (3) determine the level of ordinary skill in the art.<sup>6</sup> In addition to these factual determinations, the Examiner must also provide “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”<sup>7</sup> Moreover, the analysis supporting obviousness should be made explicit and should “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements” in the manner claimed.<sup>8</sup>

Only if the Examiner makes a prima facie case of obviousness, does the burden shift to the Applicant for providing evidence of non-obviousness.<sup>9</sup> Obviousness is then determined based on the evidence as a whole and the persuasiveness of the arguments.<sup>10</sup> Here, the Applicants respectfully assert that the Examiner has failed to meet the evidentiary burden.

Additionally, the cited prior art differs from the Applicants’ claims. Therefore, a person of ordinary skill in the art at the time of the invention would not have looked to the prior art cited by the Examiner to create Applicants’ claims. As such, the Applicants respectfully request that the Examiner reconsider Applicants’ claims.

Since , *Basark* does not teach claim 1 it can not be combined with any dependent claims.

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subject matter *is* identically disclosed or described in the ‘prior art’) (emphasis in original).

<sup>4</sup> See, *In re Ottiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

<sup>5</sup> See, *In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

<sup>6</sup> See, *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

<sup>7</sup> See, *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

<sup>8</sup> See, *KSR Int’l Co. v. Teleflex*, No. 04-1350, slip op. at 15 (U.S. 4-30-2007).

<sup>9</sup> See, *In re Ottiker*, 977 F.2d at 1445.

<sup>10</sup> See, *Id.*

***Conclusion***

Applicants believe they have addressed and responded to every point raised in the Examiner's present action. For the reasons stated above, Applicants respectfully request reconsideration of their application and allowance of the claims.

Respectfully submitted,

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